



**Division of State Patrol
Policy and Procedure**

Number
1-1

Subject AUTHORITY POWERS AND DUTIES	
Author/Originator Office of the Superintendent	Approved by Superintendent <i>Timothy L. Carnahan</i>
Records Management Statement Supersedes P&P 1-1 dated July 19, 2017 Posted on WisDOT Internal Website (SharePoint) at https://wigov.sharepoint.com/sites/dot-dsp/policy/sitepages/home.aspx	

1. POLICY

It is the policy of the Division of State Patrol that all sworn personnel shall perform their enforcement activities within the scope of their respective statutory authority. Troopers shall place major emphasis on their primary duties as enumerated in s. 110.07(1)(a)1. Inspectors shall place major emphasis on their primary duties as enumerated in s. 110.07(3).

2. BACKGROUND

The Division of State Patrol’s primary responsibility is the regulation of traffic and the prevention of crashes on the highway. Primary trooper authority is enumerated in Wisconsin Statute 110.07(1). Primary inspector authority is enumerated in Wisconsin Statute 110.07(3). Additional trooper authority is granted in s. 110.07(2m), Chapter 48, Chapter 51, and Chapter 323. Additional inspector authority is granted in s. 110.07(4), Chapter 48 and Chapter 51. Troopers and inspectors are precluded from taking enforcement action for ordinance violations unless a warrant has been issued.

3. OBJECTIVE

The objectives of this policy are to delineate the statutory authority of inspectors and troopers and detail how that authority is to be exercised.

4. STATUTORY DEFINITIONS

4.A The powers of a peace officer are described in section s. 59.28.

59.28 Peace maintenance; powers and duties of peace officers, cooperation.

(1) Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they consider necessary.

4.B The term “Law Enforcement Officer” is defined in s. 165.85(2)(c), and includes both troopers and inspectors.

165.85(2)(c) means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed and sworn to enforce. “Law enforcement officer” includes a university police officer, as defined in s. 175.42 (1) (b).

4.C The terms “Felony” and “Misdemeanor” are defined in s. 939.60.

939.60 Felony and misdemeanor defined. A crime punishable by imprisonment in the Wisconsin state prisons is a felony. Every other crime is a misdemeanor.

4.D The term “Felony in Another State” is defined in s. 946.47(2)(b).

946.47(2)(b) A person who commits an act within the jurisdiction of another state which is punishable by imprisonment for one year or more in a state prison or penitentiary under the law of that state and would, if committed in this state, constitute a felony under the law of this state.

4.E Arrest by a law enforcement officer is enumerated in s. 968.07.

968.07 Arrest by a law enforcement officer.

(1) A law enforcement officer may arrest a person when:

(a) The law enforcement officer has a warrant commanding that such person be arrested; or

(b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

(c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime.

(1m) Notwithstanding sub. (1), a law enforcement officer shall arrest a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128 (3g) (b), or 968.075 (2) (a) or (5) (e).

(2) A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.

(3) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least 7 days after the date of the shooting.

5. TROOPER AUTHORITY

5.A Trooper Primary Authority – Section 110.07(1)(a) limits the size of the State Traffic Patrol to 399 troopers and 1 person designated to head them. This language is important when reviewing s. 323.12(2)(c) as it identifies the “State Traffic Patrol” and does not include inspectors.

A trooper’s primary authority is enumerated in Wisconsin Statute 110.07(1)(a)1., 2., and 3. Troopers utilize this authority to perform basic enforcement activities involving traffic patrol, all-terrain vehicles, underage drinking, littering, uncased weapons, and snowmobile violations.

110.07(1)(a) The secretary shall employ not more than 399 traffic officers. The state traffic patrol consists of the traffic officers, the person designated to head them whose position shall be in the classified service and, if certified under s. 165.85 (4) (a) 1. as qualified to be a law enforcement officer, the division administrator who is counted under s. 230.08 (2) (e) 12. and whose duties include supervising the state traffic patrol. The division administrator may not be counted under this paragraph. Members of the state traffic patrol shall:

110.07(1)(a)1. Enforce and assist in the administration of this chapter and chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.335, 125.07 (4) (b), 125.085 (3) (b), 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders or rules issued pursuant thereto.

110.07(1)(a)2. Have the powers of sheriff in enforcing the laws specified in subd. 1. and orders or rules issued pursuant thereto.

110.07(1)(a)3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof.

110.07(2) The traffic officers employed pursuant to this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways.

5.A.1 Except as noted in Section 10 of this policy, the authority of troopers to enforce violations of the traffic code extends to all highways within the state.

5.A.2 Section 110.07(1)(a)2. allows troopers to take enforcement action for all laws enumerated under s. 110.07(1)(a)1. 24 hours a day, on or off duty and in or out of uniform.

5.A.3 Section 110.07(1)(a)3. gives troopers broad powers to stop and inspect vehicles for violations of the enumerated statutes. The authority to enter any place where vehicles are stored or parked, without consent of the owner, to examine such vehicles, requires specific written permission from the Region Commander.

- 5.A.4 As a general policy, troopers do not patrol within municipalities. If while passing through any city or village or while in the municipality on other business, a violation of the law is observed, troopers are expected to take enforcement action.

- 5.B Trooper Additional Authority – In addition to the trooper’s primary authority enumerated in the foregoing sections, troopers have been granted additional authority in section 110.07(2m).

110.07(2m) In addition to the primary powers granted by subs. (1) and (2), any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. A state traffic officer shall at all times be available as a witness for the state but may not conduct investigations for crimes under chs. 939 to 948 other than crimes relating to the use or operation of vehicles. The primary duty of a state traffic officer shall be the enforcement of chs. 340 to 351 or of any other law relating to the use or operation of vehicles upon the highway. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor shall any such officer be required to serve civil process. The department may assign state traffic officers to safeguard state officers or other persons.

 - 5.B.1 Section 110.07(2m) allows troopers to take enforcement action for violations of law punishable by either forfeiture or criminal penalty, twenty-four hours a day, on or off duty, and whether in or out of uniform.
 - 5.B.2 In most circumstances, the person arrested will be incarcerated in the county where the arrest is made. The arresting officer should notify all other interested police agencies regarding the circumstances of the arrest.
 - 5.B.3 The prohibition against criminal investigations applies to investigations under chs. 939 to 948 that are not related to the use or operation of vehicles. State Patrol criminal investigations relating to the use or operation of vehicles will generally be limited to criminal acts directly related to traffic crashes.
 - 5.B.4 Section 110.07(2m) states that a trooper cannot be required to serve civil process. The trooper may, with permission of a supervisor, consent to serve civil process.
 - 5.B.5 Section 110.07(2m) prohibits troopers from taking part in a dispute or controversy between employer or employee concerning wages, hours, labor, or working conditions. Troopers may act as peace officers during a prison riot or other disturbance even when the disturbance occurs during a strike of prison guards; they may not, however, perform other duties of guards. (68 Atty. Gen 104)

- 5.C Trooper Authority During Civil Disorder – Section 323.12(2)(c) gives the governor the authority to call out troopers and conservation wardens during times of civil disorder. This section does not apply to inspectors.

323.12(2)(c) If the governor determines that a condition of civil disorder or a threat to the safety of persons on state property or damage or destruction to state property exists, he or she may, without declaring an emergency, call out the state traffic patrol or the conservation warden service or members of that patrol or service for use in connection with the threat to life or property.

Troopers acting under the expanded authority granted in s. 323.12(2)(c) are not constrained by the restriction in s. 110.07(2m) which limits investigations for crimes under chs. 939 to 948.

6. INSPECTOR AUTHORITY

6.A Inspector Primary Authority – An inspector’s primary authority is enumerated in Wisconsin Statute 110.07(3). Inspectors utilize this authority to perform motor carrier enforcement and inspection, all-terrain vehicle enforcement, snowmobile enforcement, and school bus inspection activities.

110.07(3) The secretary may employ inspectors who may not wear the uniform of the state patrol, whose duties shall be to enforce and assist in administering ss. 23.33, 23.335, and 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, the inspection requirements of s. 121.555 (2) (b) and the requirements under s. 346.45 (4) for vehicles being used to transport hazardous materials. Such inspectors, in the performance of these duties, shall have the powers and authority of state traffic officers. For the purpose of death, disability and retirement coverage, such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub. (5), the secretary may clothe and equip inspectors as the interest of public safety and their duties require.

6.A.1 Except as noted in Section 10 of this policy, the authority of inspectors to enforce violations of the traffic code extends to all highways within the state.

6.A.2 Section 110.07(3) allows inspectors to take enforcement action for all enumerated laws twenty-four hours a day, on or off duty and in or out of uniform.

6.A.3 Section 110.07(3) gives inspectors broad powers to stop and inspect vehicles for violations of the enumerated statutes. The authority to enter any place where vehicles are stored or parked, without consent of the owner, to examine such vehicles, requires specific written permission from the Region Commander.

6.A.4 As a general policy, inspectors do not patrol within municipalities. If while passing through any city or village or while in the municipality on other business, a violation of law is observed, inspectors are expected to take enforcement action.

6.B Inspector Additional Authority – In addition to the inspector’s primary authority enumerated in section 110.07(3), inspectors have been granted additional authority in section 110.07(4).

110.07(4) In addition to the primary powers granted by sub. (3), any inspector shall have the powers of a peace officer under s. 59.28, except that the inspector shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. An inspector shall at all times be available as a witness for the state but may not conduct investigations for crimes under chs. 939 to 948 other than crimes relating to the use or operation of vehicles. The primary duty of an inspector shall be the enforcement of the provisions specified in sub. (3). No inspector may be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor may an inspector be required to serve civil process. The department may assign inspectors to safeguard state officers or other persons.

- 6.B.1 Section 110.07(4) allows inspectors to take enforcement action for violations of law punishable by either forfeiture or criminal penalty, twenty-four hours a day, on or off duty, and in or out of uniform. This section includes the authority to enforce all provisions of the motor vehicle code.
- 6.B.2 In most circumstances, the person arrested will be incarcerated in the county where the arrest is made. The arresting officer should notify all other interested police agencies regarding the circumstances of the arrest.
- 6.B.3 The prohibition against criminal investigations applies to investigations under chs. 939 to 948 that are not related to the use or operation of vehicles. State Patrol criminal investigations relating to the use or operation of vehicles will generally be limited to criminal acts directly related to traffic crashes.
- 6.B.4 Section 110.07(4) states that an inspector cannot be required to serve civil process. An inspector may, with permission of a supervisor, consent to serve civil process.
- 6.B.5 Although inspectors are not granted the additional civil disorder authority given to troopers under s. 323.12(2)(c) they may act in a civil disorder situation under their additional authority enumerated in s. 110.07(4).
- 6.B.6 Section 110.07(4) prohibits inspectors from taking part in a dispute or controversy between employer or employee concerning wages, hours, labor, or working conditions. Based upon an Attorney General's opinion concerning trooper authority during a strike by prison guards, it is clear that inspectors may act as peace officers during a prison riot or other disturbance even when the disturbance occurs during a strike of prison guards; they may not, however, perform other duties of guards. (68 Atty. Gen 104)

7. OFF-DUTY LAW ENFORCEMENT

While both troopers and inspectors have off-duty arrest authority for statutory violations, off-duty enforcement action is discouraged. If off-duty enforcement action is necessary, it should be taken with consideration for the safety and protection of oneself and innocent parties. Troopers and inspectors who become involved in an off-duty enforcement action shall notify a Division of State Patrol supervisor of their involvement

as soon as practical. A trooper or inspector involved in an off-duty enforcement action should turn the situation over to an on-duty law enforcement officer as soon as practical. The employee is responsible for the completion and submission of all required reports concerning his/her involvement. Troopers and inspectors should consider many factors before taking off-duty enforcement action. Some of those factors include:

- 7.A. The seriousness of the violation.
- 7.B The perceived threat of physical harm to oneself or others.
- 7.C The need and availability of defensive weapons or protective clothing.
- 7.D The availability of backup law enforcement assistance.
- 7.E The ability to readily identify oneself as a law enforcement officer. Identification should be made both verbally and using the issued State Patrol ID card.
- 7.F The availability of communications.

8. ADDITIONAL TROOPER AND INSPECTOR RESPONSIBILITIES

Troopers and inspectors have additional responsibilities when handling juvenile, mental health, or detoxification situations under chapters 48, 938, and 51.

- 8.A Children's Code – Wisconsin Statutes 48.19 and Juvenile Justice Code 938.19(1) describes the circumstances under which juveniles may be taken into custody by a law enforcement officer.
- 8.B Mental Health/Emergency Detention – Wisconsin Statute 51.15 describes the circumstances under which a law enforcement officer may take a person into emergency detention under the mental health act.
 - 8.B.1 A child taken into custody under the circumstances delineated in Chapter 51 is handled following the provisions of this chapter rather than Chapter 48 or 938.
- 8.C Detoxification/Protective Custody – Section 51.45(11)(b) describes the circumstances under which a law enforcement officer shall take a person into protective custody due to alcohol incapacitation.
 - 8.C.1 A child taken into custody under the circumstances delineated in Chapter 51 is handled following the provisions of this chapter rather than Chapter 48.
 - 8.C.2 Troopers and inspectors should understand that the protective custody described in S. 51.45(11) is mandatory when the person is incapacitated. The term incapacitated is defined in Section 51.45(2)(d).

9. FRESH PURSUIT INTO ANOTHER STATE

The laws of Illinois, Iowa, Minnesota, and Michigan are virtually identical to Wisconsin Statute 976.04 and allow for fresh pursuit from Wisconsin into those respective states to apprehend persons suspected of having committed a felony in Wisconsin.

- 9.A Troopers and inspectors may enter another state in fresh pursuit only if the person being pursued is believed to have committed a felony in Wisconsin.
- 9.B A trooper or inspector entering another state in fresh pursuit is acting only with the authority granted by the fresh pursuit statutes of that state.
 - 9.B.1 When possible, the trooper or inspector shall attempt to obtain the assistance of a police officer of that jurisdiction.
 - 9.B.2 A trooper or inspector entering another state in fresh pursuit may make an arrest in that state for a felony committed in Wisconsin.
 - 9.B.3 After an arrest is consummated, the trooper or inspector shall bring the person arrested before a court in the county where the arrest occurs.

10. INDIAN RESERVATIONS

Trooper and inspector authority on Indian reservations is dependent upon the nature of the Indian reservation. Federal Public Law 280 grants the State of Wisconsin police authority over all Indian reservations except the Menominee Indian Reservation.

- 10.A Public Law 280 Reservations – On Indian reservations other than the Menominee Reservation, troopers, and inspectors may arrest any persons under their respective law enforcement authority.
- 10.B Menominee Reservation – Trooper and inspector authority on the Menominee Reservation is limited. The provisions of Public Law 280 do not apply to the Menominee Reservation. Troopers and inspectors have authority on the Menominee Reservation only over Non-Menominee tribal members.
 - 10.B.1 Menominee Tribal Members – Troopers and inspectors have no authority to arrest members of the Menominee Tribe within the confines of their tribal reservation.
 - 10.B.2 Non-Members – Troopers and inspectors have authority over all non-members of the Menominee Tribe for violations committed on or off the reservation under their respective law enforcement authority.
 - 10.B.3 Pursuit – Troopers and inspectors may pursue on to the Menominee Reservation for violations committed off the reservation. Non-tribal members may be arrested, taken into custody, and removed from the reservation. Tribal members may be cited but cannot be taken into custody. They may

only be removed from the reservation through an extradition order issued by the tribal court.

10.B.4 The following chart is provided to assist troopers and inspectors in understanding their authority as it relates to Wisconsin Indian reservations.

	Menominee Reservation		Other Reservations	
	Tribal Member	Non-member	Tribal Member	Non-member
Felony Crime	F	F-S	F-S	S
Misdemeanor Crime	F-T	F-S	F-S-T	S
Traffic Crime	T	S	S-T	S
Traffic Forfeiture	T	S	S-T	S
Pursuit onto/removal from reservation	Extradite	Yes	Yes	Yes

F = Federal S = State T = Tribal

11. REFERENCES

- Public Law 280, codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. § 1321–1326
- Wis. Stats. Ch. 48
- Wis. Stats. Ch. 51
- Wis. Stats. Ch. 59
- Wis. Stats. Ch. 165
- Wis. Stats. Ch. 323
- Wis. Stats. Ch. 939
- Wis. Stats. Ch. 946
- Wis. Stats. Ch. 968